



**CITY OF LODI
COUNCIL COMMUNICATION**

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AGENDA TITLE: Approve Waiver of Conflict of Interest for Meyers Nave's Representation of Northern California Power Agency (NCPA)

MEETING DATE: September 7, 2011

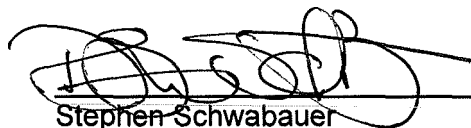
PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Approve Waiver of Conflict of Interest for Meyers Nave in their representation of the Northern California Power Agency (NCPA).

BACKGROUND INFORMATION: The law firm of Meyers Nave represents the City from time to time with regard to development agreements and other land use matters. It also assisted the City in drafting sections of the development agreements relating to electric utility costs. Meyers Nave also serves as General Counsel to NCPA, and has been tasked with drafting a Professional Services Agreement between NCPA and the City of Lodi for the construction of a power line connection between the White Slough power plants and the City. Although technically a conflict of interest, it is reasonable to waive the conflict in light of the risks involved and our desire to use Meyers Nave for land use work in the future.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.


Stephen Schwabauer
City Attorney

APPROVED:


Konradt Bartlam, City Manager

575 Market Street, Suite 2600
San Francisco, California 94105
tel 415.421.3711
fax 415.421.3767
www.meyersnave.com

Steven T. Mattas
Attorney at Law
smattas@meyersnave.com

JUL 25 2011

CITY ATTORNEYS OFFICE

July 18, 2011

D. Stephen Schwabauer
City Attorney of Lodi
Office of the City Attorney
P.O. Box 3006
Lodi, CA 95241-1910

Re: *Consent to Continued Representation of City of Lodi and Northern California Power Agency - LSR 11.67*

Dear Steve:

As you are aware, we act as the General Counsel to the Northern California Power Agency ("NCPA"). In that capacity we have been asked by NCPA to provide advice to it regarding reviewing a potential Professional Services Agreement with the City of Lodi ("Lodi"). Under the terms of the agreement, NCPA would study the feasibility of connecting Lodi's local services at NCPA's 230 KV switchyards at the CT2 (STIG) site located in Lodi. In advising NCPA regarding this Professional Services Agreement, there may be matters which create either actual or potential conflicts of interest between the interests of NCPA and those of Lodi, and the interests and objectives of NCPA and Lodi relating to this matter either are or may become inconsistent with each other. The purpose of this letter is to disclose this relationship and situation to you, and to seek Lodi's informed, written consent to our continued representation of NCPA with respect to this matter as well as our continued representation of Lodi in the land use and CEQA matters for which we have been retained.

As attorneys, we are governed by specific rules relating to our representation of clients when present or potential conflicts of interest exist. Rules 3-310(B), 3-310(C), and 3-310(E) of the California Rules of Professional Conduct provide as follows:

Rule 3-310(B): A member shall not accept or continue representation of a client without providing written disclosure to the client where:

- (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or
- (2) The member knows or reasonably should know that:
 - (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and

- (b) the previous relationship would substantially affect the member's representation; or
- (3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or
- (4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

Rule 3-310(C): A member shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

Rule 3-310(E): A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

With regard to Rule 3-310(B), neither we nor, to the best of our actual knowledge, any member of our firm has or has had (i) any legal, business, financial, professional, or personal relationship with any party, witness, person, or entity or (ii) any interest in the subject matter of our representation of NCPA disclosure of which is required by Rule 3-310(B), except for our past and current representation of Lodi, as described above.

With regard to Rule 3-310(C), our presently proposed representation of NCPA in connection with the matter described above will not result in our representing NCPA and Lodi in the same matter. However, it will result in our representing NCPA in the matter first described above at the same time as we are representing Lodi in separate matters. Therefore, and since we have a professional duty of undivided loyalty to each current client, given our current and past representation of Lodi, we need the informed written consent of both NCPA and Lodi before we can represent NCPA in the captioned matter.

With reference to Rule 3-310(E), we do not believe that we have obtained any confidential information from Lodi that would be material to the current matter in which we have been asked to represent NCPA. However, Lodi may believe we have or may receive such material confidential information due to the nature of our past and current representation of Lodi.

Consequently, before representing NCPA in this current matter, we request the informed written consent of Lodi.

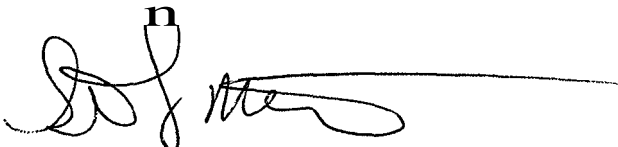
In connection with our proposed representation of NCPA in the matter described above and for purposes of assisting you in determining whether or not to consent to such representation, we hereby inform you that:

- (a) We do not anticipate any foreseeable adverse effects upon Lodi by reason of our representation of NCPA.
- (b) We do not anticipate any foreseeable adverse effects upon NCPA by reason of our past and current representation of Lodi.

We request that Lodi consider this written request carefully. You may wish to confer with independent legal counsel regarding this consent, and should feel free to do so. If, after review and consideration of the foregoing, Lodi consents to our representation of NCPA in the captioned matter, please sign the enclosed copy of this letter and return it to me as soon as possible.

Please do not hesitate to call me if you have any questions or concerns about the foregoing.

Very truly yours,



Steven T. Mattas

Cc: Conflicts Dept.

City of Lodi consents to the representation described above.

Dated: _____, 2011

City of Lodi

By: _____
Its:

1678190.1